IN THE HGH COURT OF JUDICATURE AT MADRAS

DATED:10.09.2007

CORAM:

THE HON'BLE MR.JUSTICE M.CHOCKALINGAM

W.P.NOs.23782 to 23784 of 2004
and
WP.MP.NOS.28830,28832 ANDF 28034 OF 2004 and
WV.MP.Nos.89 and 149 of 2007

M.Abdul Jabar — Petr., in W.P.No.23782 of 2004
N.Kaliaperumal — Petr., in W.P.No.23783 of 2004
R.Pothiappan — Petr., in W.P.No.23784 of 2004

Vs.

1.The State of Tamil Nadu rep. by the
Secretary to Government,
Health and Family Welfare Department,
Chennai-9.

2. The Director of Public Health and Preventive Medicine,
D.M.S.Compound,
Chennai-6.

3.The Deputy Director of Health Services,
Thanjavur ...Respondents in all W.Ps.

Petitions filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorari calling for the records in pursuant to the impugned orders passed by the second respondent in R.No.141572/MPI/99/S1 dated 13.5.2002 and the order passed by the third respondent in Proc.Rc.No.13666/98/A2, 6346/03/A7 dated 20.04.2004 and 13666/98/A2 dated 19.12.2003 respectively and to quash the same.

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For Petitioners: Mr.S.M.Subramaniam
For Respondents: Mr.N.Senthil Kumar
Additional Government Pleader

O R D E R

This order shall govern these three writ petitions viz. W.P.No.23782 ,23783 and 23784 of 2004.

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2. All these writ petitions have been brought forth by the petitioners challenging the order passed by the second respondent referred to in each application dated 13.5.2002 and also the orders passed by the third respondent on 19.12.2003 and 20.4.2004 seeking to quash the order by way of writ of certiorari.

3. Affidavits filed in support of the petitions are perused. The Court heard the learned counsel on either side.

4. The short facts of the case of the pettioners in all the three writ petitions are that the petitioners have been working as Health Inspector, Grade-I in various Government Hospitals in Thanjavur District. They were promoted in the year 1989 and their scale of pay was fixed accordingly and they are receieing the revised pay paid for the past so many years without any interruption. After a lapse of so many years, the impugned orders were served upon them stating that their scale of pay was fixed at Rs.1,600/- p.m. with effect from 4.11.1988 in the scale of pay of Rs.1600-50-2300-60-2660 and pursuant to which the office note of the third respondent was cancelled. Aggrieved over the same, the above writ petitions have been brought forth by the petitioners.

5. Learned counsel for the petitioners, advancing his arguments has contended that while the petitioners were promoted in the year 1989 and their scale of pay was also fixed at that time and they have been paid all along the period, the impugned orders of recovery have been passed, even without notice or giving any opportunity. Added further the learned counsel that in the instant case, on their promotion, their scale of pay was fixed in the year 1989 and they have been receving the same till their retirement and after the period of 18 years, no question of recovering the said amount from their salary would arise. Now, the learned counsel for the petitioner relied on the decision of the Apex Court reported in *JT 1994(1) S.C574 in SHYAM BABU VERMA & Ors. Vs. UNION OF INDIA & Ors*

6. The Court heard the learned counsel for the respndents on the above contentions.

7. After hearing the rival submissions made, this Court is of the considered opinion that the impugned orders have got to be set aide by issuing a writ of certiorari on the ground that the petitioners were attached to the Public Health Department as Health Inspectors, that they have been in service for more than three decades and they were promoted in the year 1989 and their scale of pay have been fixed. But, the the impugned order of recovery was passed even without any notice or opportunity of being heard. Under such circumstances, it is a glaring case where the principles of natural

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justice is offended. However, since the pay has been fixed and they have been paid for nearly 18 years, no question of recovery would arise since it is represented that all the petitioners have already been retired from service on attaining their superannuation. The decision of the Apex Court relied on by the learned counsel for the petitioners would squarely apply to the present facts of the case. Applying the principle laid down by the Apex Court, this Court has no hesitation to question the same in its entireity.

8. The writ petitions are allowed. No costs. Consequently, WP.MP.NOS.28830,28832 AND 28034 OF 2004 and WV.MP.Nos.89 and 149 of 2007 are closed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

VJY

To

1.The Secretary to Government,
Health and Family Welfare Department,
Chennai-9.

2. The Director of Public Health and Preventive Medicine,
D.M.S.Compound,
Chennai-6.

3.The Deputy Director of Health Services,
Thanjavur

+2ccs to M/s.S.M.Subramaniam, Advocate Sr 56610 & 56611

+1cc to Govt. Pleader Sr 56501

LA (CO)
km/19.9.

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